FORM VAT 305A

GOVERNMENT OF TELANGANA
COMMERCIALTAXES DEPARTMENT

REVISED SHOW CASUE NOTICE FOR ASSESSMENT OF VALUE ADDED TAX
See Rule 25 (5)

TIN No: 36894097186/VAT/Audit Dated 02-11-2019

Sub : T VAT Act '05 – M/s Modi & Modi Constructions, M.G.Road - Secunderabad - Audit conducted for the period January 2014 to June 2017 – Certain variations noticed - Show Cause Notice issued – Dealer has failed to file certain documentary evidence – Revised show cause notice issued - Regarding.

Ref : 1. Notification for Scrutiny of Accounts of VAT in Form VAT 304, dated 14-12-2018
2. Authorization for assessment issued in Admn 1C, dated 03-10-2019 by Deputy Commissioner (CT), Hyderabad.
3. Show cause notice issued in Form VAT 305A, dated 03-10-2019 by the undersigned.
4. Letter filed by the dealer dated 09-10-2019.
5. Personal hearing opportunity provided on dt. 21-10-2019.

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M/s Modi & Modi Constructions, M.G.Road, Secunderabad are the registered dealer on the rolls of CTO M.G.Road-S.D.Road Circle with TIN No 36894097186 and are engaged in the business of Construction of Independent Houses/ Row Houses in the name and style of Nilgiri Homes at Rampally village, Keesara Mandal, Ranga Reddy District. They have opted for composition scheme under section 4(7)(d) of T VAT Act by filing Form VAT 250, dated 20-03-2013 and paying taxes at the rate of 5% on 25% of the total consideration received.

On authorization of Deputy Commissioner (CT) Begumpet Division, the assessee was served Form-VAT-304 to produce the books of accounts. Accordingly they have filed their books of accounts and connected records for the period January 2014 to June 2017 for audit verification as under.

1) Copy of Form VAT 250
2) Sales Statement
3) Sample Sale deed copies
4) P&L Accounts.

On verification of books of account submitted by the dealer with reference to the monthly VAT-200 Returns filed during the period from January 2014 to June 2017 the following turnovers are arrived which have been assessed as per the authorization issued in Admn 1C dated 03-10-2019 in the reference 2nd cited.

Turnovers as per VAT 200 returns.

S. No.	Description	2013-14 (01/2014 to 03/2014	2014-2015	2015-16	2016-17	2017-18 (up to June 2017)
	Purchase Account:					
1.	Exempted Purchases	0	0	0	0	0
	Sales Account:					
1.	Exempt Sales	0	15121763	14340000	28550250	8606250
2.	5% Sales	0	3840588	6620250	9516750	2868750
3.	Tax @ 5%	0	192029	331013	475838	143438
4.	**Total Sales**	0	18962351	20960250	38067000	11475000
5.	**Output tax**	**0**	192029	331013	475838	143438
6.	VAT Due	0	192029	331013	475838	143438
7.	VAT Paid	0	192029	331013	142814	143438
8.	**Balance**	**0**	**0**	**0**	**333024**	**0**

- **Short payment of Rs. 333024/- is noticed.**

Turnover as per P&L Accounts (SALE OF FLATS)

Sl.No.	Period	Constructi on account receipts as per P&L	turnover liable to tax @ 5% as per P&L	Turnover liable to tax @ 5% as per VAT returns	Differential turnover arrived	Tax @ 5%
1	2013-14 (01/2014-03/2014)	0	0	0	0	0
	2014-15	26007241	6501810	3840588	2661222	133061
1.	2015-16	36823350	9205838	6620250	2585588	129279
2.	2016-17	49492000	12373000	9516750	2856250	142813
3.	2014-18 (Apr'17 to Jun'18)	19425000	4856250	2868750	1987500	99375
Total differential tax		131747591	32936898	22846338	10090560	**504528**

During the course of audit, the correctness and completeness of the returns filed along with payments paid by the dealer is verified with reference to the turnovers recorded in the books of account maintained by the dealer.

On verification of sample records produced, such as agreement of Sales, Sale deed and Construction agreement it is noticed that they followed a modus operandi that they first entering into agreement of sale with customers for construction and selling of flats. After entering the agreement of sale, they have executed the sale deed of semi finished flat in favour of customer for certain amount and for completion of remaining works they have entered agreement for construction and received remaining amount as per the initial or mother agreement. They have paid tax @ 5% on the 25% of total consideration received under Section 4(7)(d) of VAT Act.

In the light of the judgment in the case of M/s Omega Shelters Limited, Secunderabad in WP No 11528 dt 24-04-2015 rendered by Hon'ble High Court of AP, the method of tax payment under section 4(7)(d) of the Act is agreed for the post construction after executing sale deed also. The gist of the judgment is as under :

> "If dealers engaged in the construction and sale of residential apartments, houses, buildings or commercial complexes exercise the option, and comply with the conditions stipulated in Section 4(7)(d) and Rule 17(4), they cannot be denied the benefit of composition there under for the construction made by them for the very same person, after execution of a registered deed for the sale of a semi finished structure. Denial of the benefits of the composition scheme under Section 4(7)(d) to such dealers, for the post-sale construction made in terms of the initial agreement is illegal and is contrary to the provisions of the Vat Act and the rules made there under.
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> However the dealer is requested to produce all Original agreements of sale, Original Sale deeds and Original construction agreements for further verification which were produced on sample basis at the time of audit.

In view of the above it is proposed to assess on the following under declared tax for the period January 2014 to June 2017 as under :

1.	Short payment of Tax of	: Rs. 333024-00
2.	Tax on under declared Turnover	: Rs. 504528-00
	Total	: **Rs. 837552-00**

Accordingly a show cause notice in form VAT 305A, dated 03-10-2019 was issued to the dealers calling their written objections if any against the proposed tax and requested to produce documentary evidence such as all Original agreements of sale, Original Sale deeds and Original construction agreements with respect to Nilgiri Homes (independent Houses) at Rampally Village, Keesara Mandal, Ranga Reddy District. Meanwhile as per the request of the dealer (10) days extension of time i.e. up to 21-10-2019 was also granted to the assessee and also provided a personal hearing opportunity on 21-10-2019, 11-00 A.M. But, so far, the assessee neither submitted any documentary evidence as requested in the show cause notice nor attended for personal hearing opportunity. Hence, in the said circumstances, the undersigned has left with no other option except estimate the difference sale deed turnover with reference to Agreement of sale turnover on best of judgment basis which is done as under.

Sl.No.	Period	Sale deed value	Estimated Agreement of sale value (Adding 30% value on Sale deed value)	Difference turnover arrived	Proposed to tax @ 5% on 25% difference turnover
1	01/2014 to 03/2014	25811540	33555002	7743462	96793
2	2014-15	26007241	33809413	7802172	97527
1	2015-16	36823350	47870355	11047005	138088
2	2016-17	49492000	64339600	14847600	185595
3	2017-18 (April'17 to June'17)	19425000	25252500	5827500	72843
	Total	**157559131**	**204826870**	**47267739**	**590846**

Further, while issuing show cause notice a turnover of Rs. 2,58,11,540/- is not proposed by oversight which is now being proposed as under.

Turnover as per P&L Accounts (SALE OF FLATS)

Sl.No.	Period	Construction on account receipts as per P&L	turnover liable to tax @ 5% as per P&L	Turnover liable to tax @ 5% as per VAT returns	Differential turnover arrived	Tax @ 5%
1	2013-14 (01/2014-03/2014)	25811540	6452885	0	6452885	322645
Total tax	**differential**	25811540	6452885	0	6452885	**322645**

Total under declared tax proposed in the revised show cause notice.

1. Short payment of Tax : Rs. 333024-00
2. Tax on under declared turnover : Rs. 827173-00 (Rs.504528+Rs.322645)
3. Tax on differential turnover arrived w.r.t Agreement of sale turnover: Rs.590846-00

Total : **Rs. 17,51,043-00**

The dealer is requested to file the written objections if any against the proposed turnovers within (7) days of receipt of this notice, failure which the orders will be passed by confirming this show cause notice.

2/11/19

State Tax Officer -1 (I/c)
M.G.Road – S.D.Road Circle

To,
M/s Modi and Modi Constructions,
5-4-187/344, 2nd Floor, Soham Mansion,
M.G. Road, Secunderabad.